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PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 09/849,101 Confirmation No.: 7967
Applicant : Michael A. Fischer et al.
Filed : May 4, 2001
Title : System and Method for Providing a Selectable Retry Strategy for
Frame-Based Communications
TC/Art Unit : 2661
Examiner: : R. W. Wilson

Docket No. : 56162.000561
Customer No. : 21967

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION

Sir:

In reply to the Office Action dated September 17, 2004, the period for response being extended one month to January 18, 2005 (the first business day following a Government holiday) by the attached Petition for Extension of Time, reconsideration in view of the following remarks is respectfully requested. Claims 1-44 remain pending.

Applicants appreciate the Examiner's indication that claims 25-32 and 34-44 are allowed and that claims 23 and 24 contain allowable subject matter. However, for the reasons set forth herein, Applicants submit that all pending claims are in a condition for allowance.

I. Informal Matters

The Examiner objected to claims 1-24 and 33 due to various informalities. Regarding claims 1, 2, 4, 5, 8-10, 12, 13 and 17-22 the Examiner stated that the use of the term

“programming” could be construed as software which is alleged to be unpatentable under 35 U.S.C. § 101. Similarly, the Examiner objected to the use of the term “programmed” in claims 9, 21 and 33. Regarding claims 9, 21 and 33 the Examiner stated that the claim term “duration/ID” should be changed to either “duration” or “id.”

In reply to the Examiner’s first point, Applicants respectfully decline to adopt the Examiner’s suggested replacement with the term “selecting.” The term “programming” or “programmed” in the context of the claims as well as the specification refers to processing that is performed by the transceiver transmitting the frame-based communication signal to cause the signal to contain one or more bits that are indicative of some aspect of the retry strategy. This processing is typically performed by a processor or equivalent hardware and/or software executing on hardware in the transceiver. For example, in a simple exemplary case, the transceiver may program a bit of zero in a particular field contained within the frame to indicate a retry instruction or a bit of 1 in the same field to indicate no retry instruction. Applicants respectfully submit that this step is statutory within the context of § 101 and the Examination guidelines set forth in M.P.E.P § 2106. However, Applicants also note that this is not the only step within the claim.

In reply to the Examiner’s second point, Applicant’s respectfully submit that the “duration/ID” field is a term of art taken from the 802.11b communications standard specification. This is a field typically included in data frames sent using the 802.11b protocol. Therefore use of this term in the claims as well as the specification is proper and unambiguous. Applicants refer the Examiner to the paragraph beginning at the top of page 54 of the specification of this application which references the “duration/ID” field in accordance with

standard communication protocol. The Examiner appeared to recognize that the duration/ID field was part of the communications standard in the rejection of claim 21 but failed to recognize this in the objections.

In view of the foregoing comments, Applicants respectfully request that all outstanding objections to the claims be withdrawn.

II. Claim Rejections under 35 U.S.C. § 103(a)

Claim 17-22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 5,440,545 to Buchholz *et al* (hereinafter "Buchholz"). Applicants respectfully traverse the rejection. In particular, Applicants submit that Buchholz fails to disclose a method of improving usage of a wireless medium, comprising, *inter alia*, applying, by a first transceiver system, a no retry strategy to a first frame so that retransmission of the first frame will not be attempted, as recited in independent claim 17.

In contrast to the claimed invention, Buchholz instead discloses a packet delivery system which is designed to assure deliver of all packets by using an acknowledgement scheme to permit retransmission of the missing data. When packet fragments are lost, corrupted or otherwise unintelligible to a receiving device, the acknowledgement scheme permits retransmission of the missing signal. In addition, a second acknowledgement signal is scheduled by system processing resources in order to very the successful delivery of all retransmitted data. Thus, Buchholz' system is directed to insuring receipt of all packets through acknowledgements.

In rejecting independent claim 17, the Examiner relied upon FIG. 10 of the Buchholz patent which illustrates the format and content of a packet control block. The block in FIG. 10

includes what is labeled as a RETRY COUNT field. Based on this, the Examiner states that it would have been obvious to set RETRY COUNT to zero in order to broadcast another message to the transceiver. Applicants note that at col. 12, lines 49-52 of Buchholz, the retry field is defined as keeping track of how many times the request has been sent to the control module (CM) 92. It is used to calculate the time out — *therefore, the retry count field is clearly not used to set a retry strategy but merely to track the number of retries attempted*. Thus, Applicants submit that claim 17 is patentable over Buchholz. Claims 18-22 are likewise patentable over Buchholz for at least the same reasons as claim 17. Accordingly, Applicants respectfully request that the rejection of claims 17-22 be withdrawn.

III. Conclusion

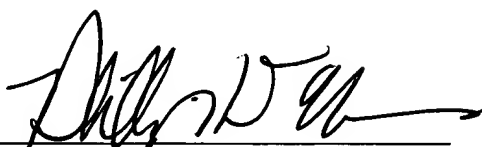
In view of the forgoing, Applicants respectfully submit that this application is in condition for allowance. Should the Examiner believe that anything further would be desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below

In the event any variance exists between the amount authorized to be charge to the Deposit Account and the Patent Office charges, please charge or credit any difference to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

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